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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/853,210	05/11/2001	Sigmund Kramer	65730-0003	6367

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RADER, FISHMAN & GRAUER PLLC  
39533 WOODWARD AVENUE  
SUITE 140  
BLOOMFIELD HILLS, MI 48304-0610

EXAMINER

BHAT, NINA NMN

ART UNIT PAPER NUMBER

1761

6

DATE MAILED: 04/17/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Applicant(s)

09/853,210

KRAMER, SIGMUND

Examiner

N. Bhat

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 August 2001.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 4-16 is/are allowed.
- 6) ☒ Claim(s) 1-3 and 17-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4. 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

1. Claim 1 is rejected under 35 U.S.C. 112, first paragraph, because the specification, while being enabling for fructose, sugar, dextrose, cocoa and salt, as well as vitamins, herbs such as ginseng etc, amino acids, willow bark, ephedrine, caffeine etc, the specification does not reasonably provide enablement for all ingredients known to man. The recitation is unduly broad, in claim 1, applicant recites "blending the peanut powder with one or more other ingredients to form a peanut powder composition...."

The recitation of one or more ingredients is an unduly broad recitation and it reads on materials neither contemplated nor disclosed. The examiner is aware that applicant is entitled to a broad claim however, the one or more ingredients reads on a multitude of materials which have no support in the specification, for example, the peanut flour can include the addition of oils to make a peanut or nut butter or the peanut flour can include ingredients like bone meal which are used in making dog chews with peanut flour etc.

Applicant is suggested to use Markush language or language, which limits the ingredients to those, which are specifically taught and supported by the specification.

2. The specification is objected to as failing to provide proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required: In claim 24 and 26, applicant recites the food composition of claim 23 further comprise of up to 15% by weight of essence of roasted peanut oil.

"Essence of roasted peanut oil" lacks antecedent basis in the specification. The specification teaches that that oil from the roasted and comminuted peanuts is released when a pressing force is applied on the ground or comminuted peanuts. There is no

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teaching about essence of roasted peanut oil unless applicant means that this is the oil, which remains in the pressed peanut cake after expressing. Applicant is requested to clarify what is meant by essence of roasted peanut oil, show support of this subject matter or cancel this claim if there is no showing of support in the specification.

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 1-3 and 17-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baxley in view of Wong [6,312,754].

Baxley teaches the invention substantially as claimed. Baxley teaches a process of making peanut flour which can be made into a flour which or finely ground paste which can be processed into a milk product, dried into a staple powder by a drying operations, and can be used as a high protein thickener or as base for soups, sauces and gravies as well as used in a beverage. The peanuts are shelled and blanched then

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pressed to remove a substantially amount of their natural oil. The pressing step is accomplished by hydraulic press, which presses the nuts under pressure on the order of 2000 to 5000 psi. The pressing steps removes from 20 to 90 weight percent of the oil, the resulting cake can be ground into a meal or fine powder to produce peanut flour which is free of agglomerates and is freely flowing and can be used as a flour replacement for bakery products and can be used in beverages, base for soup. Baxley specifically teach preparing peanut meal or flour is prepared by roasting pressed peanuts in an oven or roaster to a desired degree of roast flavor, the roasted peanuts are cooled and ground in a mill to 850 micrometers or finer, a soup is prepared by mixing water, the roasted peanut meal, salt starch, celery salt, onion powder, white pepper and heated to provide a cream of potato soup. Baxley also teaches using roasted peanut flour in making peanut butter cookies.[Note Column 2, lines 51-68, Column 4, lines 8-52, Column 5, line 1-31, column 7, lines 32 et seq.]

However, Baxley does not teach that the peanut powder or flour includes one or more ingredients to form a peanut powder composition comprised of at least 35% peanut powder.

Wong [6,312,754] teaches a process of making peanut flour which is a flowable solid that is obtained after mechanically defatting peanut paste into a cake followed by milling the cake into a granular powder.[Note Column 5, lines 11-13] Specifically, the peanuts are roasted to a desired color, blanched and then milled form a paste, the peanut paste is mechanically defatted from about 10% to about 42% using an press, expeller or similar device used to deoil or defat solids for example a hydraulic press

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similar to that use to remove cocoa butter for cocoa solid can be used. A nut cake or results from the defatting process, the nut cake is made into a peanut flour by using conventional milling or delumping equipment. The peanut flour is mixed with sugar and the roll- refined or blended to provide peanut flour and sugar composition. The ratio of peanut flour to sugar is determined by the fat content of the mix. Wong teaches that for roll-refining the mix should have a fat content of from about 20% to 30% , the ratio of peanut flour to sugar is about 3:1.[Note Column 6, lines 58-67 to Column 7, lines1-18].

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide a peanut powder composition which can be used in preparing foods and beverages from the combined teachings of Baxley and Wong because both Baxley and Wong teach applicant's method of providing roasted peanuts, grinding the roasted peanuts into a paste, pressing the past to removed some or all of the peanut oil to form a peanut cake, pulverizing or brining the cake to form a flour or powder, to blend the peanut powder with one or more ingredients such as a sugar is specifically taught by Wong. With respect to using the peanut flowing in a consumable liquid or beverage, soup, sauce or gravy is specifically taught by Baxley. It is therefore, maintained that when reading the Baxley and Wong applicant's powdered peanut composition is rendered obvious to one having ordinary skill in the art. With respect to applicant's specific peanut flour which includes one or more other ingredient such as a sugar as well as the amount of oil which has been expressed from the nut during pressing operation, as well as how one of ordinary skill in the art, would determine how much oil to press out of the nut, with respect to adding a peanut flour to a beverage,

soup and cookie mix preparations, this has been taught in Baxley and to add the peanut powder in the amount of consumable liquid which provides best results would have been obvious to one having ordinary skill in the art at the time the invention was made.

6. Claims 4-16 are free of the prior art.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Wong et al. '027 teach a nut butter and nut solid milling process. Wong et al. '217 teach a process of making low fat nuts, which removes up to 80% the oil by mixing them with a food compatible particulate material in the press. Mochizuki et al. teach a process for the preparation of peanut curd. Walling et al. teach a composition and process of making fluid reduced fat peanut butter.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to N. Bhat whose telephone number is 703-308-3879. The examiner can normally be reached on Monday-Friday, 9:30AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 703-308-3959. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-306-5665.

  
NINA BHAT  
PRIMARY EXAMINER  
GROUP 1300